Nos. 87-1362, 87-1367, and 87-1711

IN THE

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1987

PHILIP EDMONDS, *Petitioner,*

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, et al., *Respondents.*

STANLEY WILKINSON, *Petitioner,*

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, *Respondent.*

COUNTY OF YAKIMA et al., *Petitioners,*

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, *Respondent.*

BRIEF OF THE STATES OF ARIZONA, NEVADA, NEW MEXICO, SOUTH DAKOTA, UTAH, WASHINGTON, AND WYOMING IN SUPPORT OF PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

KENNETH O. EIKENBERRY
Attorney General of Washington

TIMOTHY R. MALONE
Assistant Attorney General
(Counsel of Record)

(Additional counsel listed inside cover)

Office of Attorney General
7th Floor, Highways-Licenses Bldg.
Olympia, Washington 98504
Telephone: (206) 753-6245

STATE PRINTING PLANT ◆ OLYMPIA, WASHINGTON

ROBERT K. CORBIN
Attorney General of Arizona

BRUCE MCKAY
Attorney General of Nevada

HAL STRATTON
Attorney General of New Mexico

ROGER A. TELLINGHUISEN
Attorney General of South Dakota

DAVID L. WILKINSON
Attorney General of Utah

JOSEPH B. MEYER
Attorney General of Wyoming

QUESTIONS PRESENTED

1. Does an Indian Tribe have the authority to control, through comprehensive zoning, the use of land owned by non-members but located within a reservation's boundaries, under either of the following circumstances:

(a) The land has been alienated to a non-Indian, pursuant to the federal Allotment Acts; or

(b) The land, originally allotted to a tribal member, has been received through inheritance by an heir of such member, but the heir, by reason of insufficient blood quantum, is not a tribal member?

2. Is it constitutionally permissible, under the Due Process Clause of the Fifth Amendment to the United States Constitution, for the United States acting through either the Congress, the Executive Branch, or the courts, to adopt a policy pursuant to which:

(a) Indian tribal governments have general civil regulatory jurisdiction over non-member reservation residents and their on-reservation property; and

(b) Such residents have none of the rights of participation in tribal government, as either voters in tribal elections or as candidates for tribal offices, enjoyed by tribal members, and, by reason of their ancestry, are disqualified from ever attaining such rights through tribal membership?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Nos. 87-1622, 87-1697, and 87-1711

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1987

PHILIP BRENDALE, *Petitioner,*

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, et al., *Respondents.*

STANLEY WILKINSON, *Petitioner,*

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, *Respondent.*

COUNTY OF YAKIMA et al., *Petitioners,*

v.

CONFEDERATED TRIBES AND BANDS OF THE YAKIMA INDIAN NATION, *Respondent.*

BRIEF OF THE STATES OF ARIZONA, NEVADA, NEW MEXICO, SOUTH DAKOTA, UTAH, WASHINGTON, AND WYOMING IN SUPPORT OF PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INTEREST OF THE STATES AS AMICI CURIAE

Each of the States submitting this brief has within it one or more Indian reservations. On many of those reservations the "familiar forces" set in motion by the Federal Government in the late 1800's and alluded to by this Court in *DeCoteau v. District Court*, 420 U.S. 425, at 431 (1975), have

produced the expected results. Pursuant to the invitation of the Federal Government, non-Indians have purchased land within those reservations, have established their homes and businesses there, and in many cases now actually outnumber the Indian population.[1] We estimate the total non-Indian reservation population, nationwide, to be about 350,000.[2] The Yakima Reservation, involved in this case, provides a typical example of the effects of the "familiar forces"; the non-Indian population, about 20,000, is over four times the Indian population.

The Yakima Reservation also provides a typical example of the types of claims being made by the Tribes for whom those reservations were originally set aside. The Yakima Tribe here claims that its inherent tribal sovereignty includes within it not only the power of self-government, *i.e.*, governmental power over its own members, but also a much broader power, *i.e.*, governmental power over non-members and their property. The Tribe further claims that the exercise of such power over non-members and their property preempts the exercise of any similar power by State and local governments.

In this case, the court below upheld the tribal claim of regulatory power over non-members and their property, and vacated the district court's ruling which had rejected the tribal claim of preemption.

The interest of the amici States in this case is thus twofold. First, there is the same interest which prompted the participation of the Washington Attorney General as amicus curiae in *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978),

---

[1]A state-by-state list of all reservations is attached as Appendix A. This list also contains the total population and the Indian population for each reservation. It is compiled from General Population Characteristics, United States Summary, 1980 Census of Population, Bureau of the Census, Table 71, "General Characteristics for American Indian Persons on Reservations and Alaska Native Villages," pp. 1-300 through 1-303. (We have excluded data for the Alaska Native Villages, which do not have the legal status of reservations.) The classification in this table, it should be noted, allows only an approximation of tribal and non-tribal members, since some Indians may not be members of the tribe on whose reservation they reside. Also, some non-members may be residing on Indian land as lessees, rather than on their own land.

[2]See Appendix A for the data from which this estimate is made.

and which similarly prompted the Montana Attorney General to resist the jurisdictional claims of the Crow Tribe in *Montana v. United States*, 450 U.S. 544 (1981). Simply put, that interest is in protecting a large group of the State's citizens from the power of a tribal government in which they cannot participate in any manner and the actions of which, however arbitrary, are not subject to any effective judicial checks. After *Oliphant*, to be sure, protection exists for such citizens in the criminal area. But at least within the Ninth Circuit, little, if any, protection exists in the civil area. These citizens can avoid the uncontrolled power of tribal governments only by giving up their present homes and businesses and moving off the reservation.

Second, if the decision below is not reversed, we fully expect even more claims of preemption by tribal governments of state and local governmental powers over non-members, not just in the area of zoning, but in broader areas such as environmental controls, taxation, and general business regulation.[3]

Non-members living and doing business within our nation's Indian reservations thus face a disturbing prospect. Tribal governments in which these non-members have no voice and over which there are no effective political or legal checks may be increasing the scope of their powers, and may thus be gradually replacing, as a practical matter, those governmental bodies in which the non-members do have a voice and over which there are effective checks.

Further, as this shift in governmental power takes place, from the States and their local governments to the 268 Indian Tribes within this country, there will inevitably be a type of balkanization of government within each State, and a consequent breakdown of the power of each State over its own non-Indian citizens.

We cannot countenance such a development. Nor should this Court.

---

[3]A third interest should not be overlooked. State and local governments are themselves property owners within reservations, using that property to provide educational and other governmental services for the Indian and non-Indian reservation residents. *See, e.g., National Farmers Union Insurance Companies v. Crow Tribe*, 471 U.S. 845 (1985).

STATEMENT OF THE CASE

Because this brief is submitted in support of three separate petitions for a writ of certiorari, all of which involve the same underlying proceedings, a brief history of those proceedings may be useful in showing the relationship between the various petitions. We shall also add a word regarding the tribal zoning ordinance which is here in controversy, and the rationales used by the district court and the court of appeals in reaching their decisions.

A. Proceedings Below.

The Confederated Tribes and Bands of the Yakima Indian Nation (hereafter "Yakima Tribe") brought two separate actions in federal district court, the first involving what is commonly called the "closed area" of the Yakima Reservation, and the second involving what is commonly called the "open area." Following the usage of the courts below, we shall refer to the first action as *Whiteside* I, and the second action as *Whiteside* II.[4]

In both district court actions, Yakima County and its commissioners were joined as defendants. The Tribe, as plaintiff, joined as well various non-member landowners who were contemplating development of their land. Petitioner Philip Brendale, who owned land in the closed area, was thus joined as a defendant in *Whiteside* I, and Petitioner Stanley Wilkinson, who owned land in the open area, was joined as a defendant in *Whiteside* II.

In *Whiteside* I, the district court held that the Tribe had zoning authority over all land within the closed area, including land owned by non-members such as Mr. Brendale, and that this tribal authority was exclusive of any authority in the county. In *Whiteside* II, in contrast, the district court held that the Tribe had no such authority over land within the open area that was owned by non-members, such as Mr. Wilkinson, and that exclusive zoning authority over such land rested with the county.

---

[4](Jim Whiteside, a county commissioner, was the first of the individually named defendants in each action.)

Mr. Brendale, though not the county, appealed the ruling in *Whiteside* I. The Tribe appealed the ruling in *Whiteside* II. The court of appeals affirmed the district court's ruling in *Whiteside* I, but reversed the ruling in *Whiteside* II, for reasons which we shall examine shortly. Thus, through Mr. Brendale's petition, review is sought of the court of appeals' ruling in *Whiteside* I; and through the petitions of Mr. Wilkinson and the County, review is sought of the ruling in *Whiteside* II. By this brief, we urge review of both rulings.

B. **The Tribal Zoning Ordinance.**

As pointed out by the court of appeals, only the following uses are permitted in the closed area:

1. Harvesting wild crops;
2. Grazing, timber production or open field crops;
3. Hunting or fishing by Tribal members;
4. Camping in temporary structures;
5. Tribal camps for the education and recreation of tribal members;
6. Construction and occupancy of buildings and structures constructed by the Yakima Nation or the Bureau of Indian Affairs to be used in furtherance of tribal resources;
7. No building or other permanent structure or any appurtenances thereto other than those allowed in Sections 1-6 above shall be allowed in this district; Yakima County Pet. 4-A--5-A. (Quoting from Resolution T-98-72, Amended Zoning Regulations of the Yakima Indian Nation, hereafter "Tribal Ordinance", Sec. 23.)

Petitioner Brendale's use of his 160 acres in the closed area is thus severely restricted.

C. **The Rationale Of The District Court**

In *Whiteside* II, the district court, as we have noted, found the tribal ordinance to be invalid as applied to the open area, and as applied specifically to the property of Mr. Wilkinson. Focusing upon the criteria for a valid exercise of tribal civil jurisdiction over non-Indians on their own lands,

as established in *Montana v. United States*, 450 U.S. 544 (1981), the court entered *inter alia*, the following findings of fact:

* * *

> 10. The trust land in the vicinity of the Wilkinson property is not a significant source of food for members of the Yakima Nation. The proposed Wilkinson development does not threaten a food source of members of the Yakima Nation.
>
> 11. Similarly, the Wilkinson project does not threaten the economic security of the Yakima Nation. The plaintiff has not demonstrated how Yakima County's regulation of the land use of Wilkinson's "Open Area" property in any way places its economic security in jeopardy.
>
> 12. In contrast to the "Closed Area", the "Open Area" is not of a unique religious or spiritual significance to the members of the Yakima Nation. The county's regulation of the Wilkinson property will not significantly infringe on those cultural values.
>
> 13. While the court is aware of the special role which land and other natural resources play in the culture of the Yakima Indian Nation, the court finds that the county's exercise of its land use regulatory jurisdiction over the subject property does not threaten those aspects of the tribal culture.
>
> 14. The Yakima Nation's political integrity will not be diminished. The County's regulation of Wilkinson's fee land will not hinder the Yakima Nation from exercising its regulatory jurisdiction over the trust land.
>
> 15. In sum, the court finds that Yakima County's exercise of its regulatory jurisdiction over the at-issue Wilkinson property does not threaten and will not have a direct effect on the Yakima Nation's political integrity, its economic security or its health or welfare. Yakima County Pet. 30-A--31-A.

In his oral opinion the district court judge made it unmistakably clear that he thought more was at stake than just a question of jurisdiction. He stated:

> In utilizing the *Montana* standards, I am not unmoved by the desire of the Tribe and the Members thereof to have its treaty lands returned to it, but that does not, in my opinion, justify my finding that such a desire consti-

> tutes a threat to the political integrity, the economic security, or the health or welfare of the Tribe and its Members. Yakima County Pet. 50-A.

Again:

> I am unable to find that the desire, the sincere desire of the Tribe and its Members to have the deeded land restored to it is such as interferes with the political integrity, the economic security, or the health or welfare of the Tribe and its Members. Once again, that is a matter for the Legislative Branch, not the Judicial Branch to determine. Yakima County Pet. 51-A.

And again:

> I suggest to the Yakima Indian Nation that despite your sincere belief that all of the land within the exterior boundaries should be returned in accordance with the Treaty of 1855, that that may be some time in coming. I think you recognize that that is a matter for the Legislative Branch of this Government to decide; to-wit, Congress. Yakima County Pet. 52-A.

In that same oral opinion, the judge also explained why his ruling in *Whiteside* I was just the opposite from that in *Whiteside* II. He stated:

> While this case [*Whiteside* II] also involves land within the exterior boundaries of the Yakima Indian Reservation, the factual circumstances in the two cases are strikingly different. They are as different, in my opinion, as night and day. Yakima County Pet. 44-A.

The judge then went on to point out the different population and land ownership patterns in the open and closed areas, and the different degrees and types of interests of the county in each. See Yakima County Pet. 44-A--47-A.

D. **The Rationale Of The Court Of Appeals.**

In reversing the district court's ruling in *Whiteside* II, the court of appeals ignored entirely the findings of the district court, quoted above, which had applied the *Montana* criteria and which had found, under those criteria, no factual justification for the Tribe's claim of zoning jurisdiction over non-Indians. Instead, the court of appeals first determined that Indian tribal sovereignty includes zoning power, at least

over tribal members. *See* Yakima County Pet. 10-A. It then determined that extension of this power to non-members and their lands was necessary in order to fully effectuate zoning power over tribal members. In the words of the court:

> If we were to deny the Yakima Nation the right zone to fee land owned by non-Indians, we would destroy their capacity to engage in comprehensive planning, so fundamental to a zoning scheme. This we are unwilling to do. Yakima Pet. 13-A.

With this ruling, a major underpinnning for upholding the County zoning ordinance as applied to the open area was eliminated. The court of appeals did not, however, invalidate the County ordinance then and there, but remanded the question of its validity to the district court, for further weighing of federal, tribal, and county interests in the open area.

This ruling in *Whiteside* II also, of course, made affirmance in *Whiteside* I a foregone conclusion.

REASONS FOR GRANTING THE WRITS

THIS CASE PRESENTS IMPORTANT QUESTIONS OF FEDERAL LAW AFFECTING INDIANS AND NON-INDIANS NATIONWIDE WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

A. This Case Presents Questions Regarding The Scope Of Indian Tribal Sovereignty Which Are As Important As Those Decided In Montana V. United States, For The Same Reasons As In Montana.

We begin with *Oliphant v. Suquamish Tribe*, 435 U.S. 191 (1978), in which the Court held that Indian Tribes have no inherent criminal authority over non-Indians. The importance of that decision, and the scope of its effect, is shown by Appendix A, which is a listing, state-by-state, of all the Indian Reservations identified in the 1980 Census. According to that census data, there are 268 reservations, located in 33 States. The total population on those reservations is about 682,000, of which, as we have already noted, slightly more than half, about 350,000, are non-Indian. These non-Indians,

together with an undeterminable number of non-Indians who might be temporarily within a reservation for one reason or another, are now protected by the *Oliphant* decision.

But does the rationale of *Oliphant* extend to the civil side, so that its protection applies to tribal assertions of civil jurisdiction as well? In *Montana v. United States*, 450 U.S. 544 (1981), the Court answered that question in the affirmative, and on that basis invalidated an effort by the Crow Tribe to regulate non-Indian hunting and fishing on non-Indian lands.

The Court stated:

> Though *Oliphant* only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe. *Montana*, 450 U.S. at 564-565.

Again, the data presented in Appendix A show the potential scope and consequent importance of *Montana*.

Not only is the same general group of citizens adversely affected by the decision below, but the risk to which they are now exposed is, if anything, even more serious than that involved in *Montana*. While a Tribe may not, under *Montana*, prohibit or otherwise regulate the use of land such as Mr. Wilkinson's and Mr. Brendale's for hunting or fishing, it may, under the decision below, regulate and even prohibit the use of that same land for just about anything else. Further, under the rationale of the court of appeals, tribal authority over non-Indians on non-Indian lands would not be confined just to zoning. It could include business regulation, taxation, environmental controls, or any other area of governmental power, just so long as a Tribe can make a plausible argument that the exercise of such power would promote the tribal welfare. See, *e.g.*, *Shoshone Bannack Tribe v. FMC Corp.*, 14 Ind. Law Reptr. 6046 (1987) (Tribal ordinance controls non-Indian company's hiring policies, despite conflict between ordinance and collective bargaining agreement.)

For these reasons, the questions presented for review here are no less important than those decided in *Montana*.

B. **The Court Of Appeals Has Completely Disregarded The Intent of Congress, As Embodied In The Allotment Acts And As Applied By this Court In Montana.**

In denying to the Crow Tribe the authority to regulate hunting and fishing by non-Indians on non-Indian lands, the Court in *Montana* relied not only upon the *Oliphant* rationale, but also upon the policies of Congress, as embodied in the Allotment Acts of the late 1800s, pursuant to which the non-Indians had obtained those lands in the first place. See, *e.g.*, the General Allotment Act of 1887, 24 Stat. 388. As stated by the Court:

> There is simply no suggestion in the legislative history that Congress intended that the non-Indians who would settle upon alienated allotted lands would be subject tribal regulatory authority. Indeed, throughout the congressional debates, allotment of Indian land was consistently equated with dissolution of tribal affairs and jurisdiction. [citations omitted] It defies common sense to suppose that Congress would intend that non-Indians purchasing allotted lands would become subject to tribal jurisdiction when an avowed purpose of the allotment policy was the ultimate destruction of tribal government. * * * *Montana*, 450 U.S. at 559, note 9.

What this Court viewed as "common sense" in *Montana* proved to be no obstacle to the court of appeals in reaching the result it desired in this case. Even more importantly, focusing upon the intent of Congress as embodied in the allotment acts puts in sharp relief what is really at stake here. As explicitly recognized by the district court, the Yakima Tribe is attempting to reverse and undo the effect of the allotment policy, and thus remove from non-Indians precisely the protection Congress intended they should have. (See pp. 6-7, supra.)

There are, to be sure, qualifications to the general rule established in *Montana*, that Tribes have no civil jurisdiction over non-Indians on non-Indian land. The "bright line" which exists on the criminal side after *Oliphant* does not yet exist on the civil side, even after *Montana*. *See* also *National*

Farmers Union Insurance Cos. v. Crow Tribe, 471 U.S. 845 (1985).

As stated in *Montana*:

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. *Williams v. Lee*, *supra*, at 223; *Morris v. Hitchcock*, 194 U.S. 384; *Buster v. Wright*, 135 F 947, 950 (CA8); see *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 152-154. *Montana*, 450 U.S. at 565-566.

The Court then stated a second qualification:

> A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. *See Fisher v. District Court*, 424 U.S. 382, 386; *Williams v. Lee*, *supra*, at 220; *Montana Catholic Missions v. Missoula County*, 200 U.S. 118, 128-129; *Thomas v. Gay*, 169 U.S. 264, 273. *Montana*, 450 U.S. at 565-566.

But the court of appeals has in effect so expanded these qualifications as to turn them into the rule itself, in complete disregard of the congressional policy applied in *Montana*. The court of appeals uses them as a license to ignore and nullify that policy completely, and treats them, in effect, as a repudiation of everything the Court had just stated up to that point as the grounds for its decisions, *i.e.*, its discussion of the allotment policy and the principles of *Oliphant*.

Those qualifications, we submit, were intended to have a much narrower scope and more modest role. As in *Williams v. Lee*, 358 U.S. 217 (1959), for example, which was twice cited by the Court, the right of tribal self-government guaranteed by a treaty or executive order is a shield which bars a non-Indian from subjecting a tribal member involuntarily to a non-Indian court with respect to a commercial dispute. But even under *Williams* that right is not a sword which the

tribal member may use to subject the non-Indian to some form of tribal jurisdiction involuntarily. Those qualifications—especially the second—may also reflect a doctrine of tribal self-government analogous to that developed, but subsequently abandoned, for States in *National League of Cities v. Usery*, 426 U.S. 833 (1976). *Cf. Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).

The danger in going beyond these narrow limits in applying the *Montana* qualifications is not simply that the policy embodied in the allotment acts would be jettisoned. As suggested by the remarks of the district court judge quoted above (see p. 7 supra), an even more fundamental question involves the proper role of the courts in a case such as this. Are the courts, taking as their charter an overly broad reading of the *Montana* qualifications, to fashion some sort of federal common law, based on their own notions of what national Indian policy should be? Or are they to ascertain, as the Court did in *Oliphant* and *Montana*, what the Congress intended, through a careful analysis of the relevant treaty and statutory provisions?

The power conferred upon the Yakima Tribe by the decision below is "* * * a creature of judicial cloth, not legislative cloth* * *" *Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139, at 141 (1981). Review of that decision will allow the Court to reorient the lower courts—and the court below especially—in the proper direction.

C. The Indian Reorganization Act of 1934 Did Not Repudiate The Policy Embodied In The Allotment Acts That Tribes Would Have No Civil Jurisdiction Over Non-Indians.

The assimilationist policies embodied in the allotment acts were, to be sure, repudiated by the Indian Reorganization Act of 1934, 48 Stat. 984. Among the policies so repudiated was the policy of eliminating Indian reservations and tribal governments. But that Act did not repudiate the policy that Tribes would have no civil jurisdiction over non-Indians. Viewed in the light of its legislative history, the Act actually confirmed that policy.

The Indian Reorganization Act, as originally introduced in Congress, was a very different bill from that which eventually passed. Those differences are of great significance here. The original version was introduced in the House as H.R. 7902, 73rd Cong., 2nd Sess. (1934) and in the Senate as S. 2755, 73rd Cong., 2nd Sess. (1934).

The heart of the bill was Title I, "Indian Self-Government." Section 2 of Title I read, in pertinent part, as follows:

> In accordance with the foregoing purposes, the Secretary of the Interior is hereby authorized to *issue* to the Indians residing upon any Indian reservation or reservations or subdivision thereof a *charter granting to the said community group any and all such powers of government * * * as may seem fitting in the light of the experience, capacities, and desires of the Indians concerned* * * * (Emphasis supplied.)

Section 4 spelled out in more detail the powers which were to be included in the charter. The first is found in subsection (a):

> (a) To organize and act as a *Federal municipal corporation*, to establish a form of government to adopt and thereafter to amend a constitution, and to promulgate, and enforce ordinances and regulations for the effectuation of the functions hereafter specified, *and any other functions customarily exercised by local governments.* (Emphasis supplied.)

Subsection (d) granted another important power:

> (d) To establish courts *for the enforcement and administration of ordinances of the community*, which courts shall have *exclusive jurisdiction over all offenses of, and controversies between, members of the chartered community, under the ordinances of such community, and jurisdiction exclusive or non-exclusive over all other cases arising under the ordinances of the community*, and shall have power to render and enforce judgments, criminal and civil, legal and equitable, and to punish violations of local ordinances by fine not exceeding $500, or in the alternative, by imprisonment for a period of not exceeding six months: * * * * (Emphasis supplied.)

Title IV of the bill also dealt with courts, establishing a

Court of Indian Affairs. Section 3 of this Title spelled out the broad jurisdiction of that court, which included jurisdiction "of all cases, civil or criminal, arising under the laws and ordinances of a chartered Indian community, wherein a real party in interest is not a member of such community." (Subsection 4)

Clearly, a chartered Indian community was to have broad legislative jurisdiction over non-members—as broad as those of any municipal corporation or other unit of local government. And the tribal courts and the Court of Indian Affairs would have jurisdiction over non-members as well.

Titles I and IV did not survive. The major reason was that the chairman of the Senate on Indian Affairs, Senator Wheeler, was adamantly opposed.[5]

How Senator Wheeler's objections were met is best explained in his own words:

> The Chairman. * * * I got together with the Commissioner of Indian Affairs and went over the important

---

[5]In the hearings on S. 2755, the following exchange took place concerning Title I, with its proposal for federally chartered Indian communities which would exercise governmental powers over non-Indians.

> The Chairman. Well, you might possibly, Mr. Commissioner, get, for instance, some tribe of Indians in Montana [the Chairman's home state] who would want to try this, and they might get a sufficient number of signers to a petition to have a charter issued.
>
> Commissioner [of Indian Affairs] Collier. Yes.
>
> The Chairman. But if they did do it, in my judgment, it would bring about all kinds of conflicts between your Indians and the white people, and, in addition to that, it would set back the Indians, in my judgment, considerably by doing it, and I am afraid that it would lead to conflicts in the Northwest between the Indians and the whites. I mean, supposing that Indian Bureau went out there, for instance, if you had this provision in there, your Indian Bureau could go out there and take those Indians possibly and propagandize them and get sufficient numbers of them to sign it and issue a charter, and then attempt to set up this government within a government out there, which would be, in my judgment, a serious mistake on the part of the Indians to do it. Hearing Before the Committee on Indian Affairs, United States Senate on S. 2755, 73rd Congress, 2nd Sess. (1934) p. 68 (hereinafter "1934 Hearings").

Senator Wheeler liked the proposed court system in Article IV, with its jurisdiction over non-Indians, no better. *See* 1934 Hearings, pp. 205-208.

> points that I thought were in controversy, and yesterday they sent up this bill, which eliminates, it seems to me, practically all of the matters that are in controversy, * * * 1934 Hearings, p. 237.

The bill which the BIA sent up was the bill which ultimately passed. (Compare S. 3645, reproduced at 1934 Hearings, p. 234, and Act of June 18, 1934, 48 Stat. 984). All of the provisions for any sort of Indian jurisdiction over non-Indians had been eliminated. Thus the Congress, in 1934, denied to the Indians the broad, general governmental powers over non-Indians which the BIA had hoped to attain for the Indians. And that fact is reason enough for this Court to deny the claim to any such powers now.

D. The Understanding Of The Executive Branch Has Been That Indian Tribes Possess No Inherent General Governmental Power Over Non-Members.

In 1934, shortly after passage of the Indian Reorganization Act, the Solicitor of the Department of Interior, Mr. Margold, was squarely faced with the question of the extent of an Indian Tribe's inherent sovereign power over non-members. The specific question was the extent of a Tribe's inherent power of eminent domain. Op. Sol. I.D. Ind. Aff. 1917-1974, Vol I, 484, 489-491 (Dec. 13, 1934).[6]

The opinion first considered the source of this tribal power.

> The power of eminent domain is one of the usual powers of sovereignty. It is, as the United States Supreme Court held in *Cincinnati v. Louisville and Nash, R.R. Co.* (223 U.S. 390, 404) "one of the powers vital to the public welfare of every self-governing community."
>
> No Federal statutes terminating the exercise of this power by an Indian tribe are known. Therefore, under the doctrines advanced in the recent opinion of this Department on "Powers of Indian Tribes" (M-27781, approved October 25, 1934), the power of eminent domain is one of those powers which are vested in an Indian

---

[6]This important opinion remained unpublished until this two volume compilation.

> tribe within the meaning of Section 16 of the Wheeler-Howard [Indian Reorganization] Act. At 489.

Yet Solicitor Margold concluded:

> I am of the opinion that the Indian Service is correct "in assuming that a tribe organized under section 16 may exercise the power of eminent domain in the acquisition of land as against its members, but not in the case of land owned in fee by non-members." *Ibid.*

This inherent power of eminent domain, which is "one of the usual powers of sovereignty," may be exercised only with respect to tribal members.

From this, Solicitor Margold draws another important conclusion:

> It is proper to add that since the tribal power of condemnation is based, in the first instance, upon tribal jurisdiction over the members of the tribe, it ceases to exist where an Indian abandons his tribal membership; and as was said in the opinion of this Department on "Powers of Indian Tribes," (M-27781, approved October 25, 1934, at page 36), "any member of any Indian tribe is at full liberty to terminate his tribal relationship whenever he so chooses." * * *
>
> Threatened oppression in the form of condemnation, taxation, or other incidents of social control may be avoided by the termination of the landowner's tribal status. But if he remains to share in the benefits of tribal life he must bear its burdens.
>
> The restricted land of the Indian who has severed his tribal affiliation is not subject to tribal condemnation proceedings under tribal law. At 490.

Non-Indians are in the same status as the Indian who has severed his tribal membership, as the opinion goes on to make clear.

> Accordingly, patented land may be condemned, as it may be taxed on exactly the same basis as the land of non-Indians. An Indian tribe will have whatever rights of condemnation the laws of the State may give to it. * * *
>
> Land held in fee, therefore, whether owned by Indians or by non—indians, may be condemned by an Indian tribe only in accordance with State law, through proceedings brought in State courts. At 490, 491.

As this opinion explicitly recognizes, a tribal claim of general governmental power, even if it be on the civil side, and whether it involves condemnation, taxation, or any other form of civil jurisdiction, is valid only with respect to tribal members.[7] And as the opinion reminds us, our system of government has no room for "threatened oppression in the form of condemnation, taxation, or other incidents of social control" over those non-members.

E. **Constitutional Considerations.**

The reference to "threatened oppression" in Solicitor Margold's opinion serves as a reminder that important constitutional issues are here involved. We are not suggesting that they need final resolution here; but they certainly form a "backdrop" which is no less important in construing relevant treaties and statutes, than the backdrop of tribal sovereignty. *Cf. McClanahan v. Arizona Tax Commission*, 411 U.S. 164, at 172 (1973).

Tribal governments are not subject to the Bill of Rights, which governs the conduct of the Federal Government, or to the Fourteenth Amendment, which governs that of the States and its political subdivisions. *Talton v. Mayes*, 163 U.S. 376 (1896). This is because Indian Tribes, unlike political subdivisions of a State, do not exercise power delegated by a superior sovereign. *United States v. Wheeler*, 435 U.S. 313 (1978).

But if, as we submit, the ultimate controlling factor in this case is congressional intent, the Bill of Rights surely controls the permissible scope of that intent. And this gives rise to an obvious problem. How can it be permissible for Congress to intend—and thereby bring about—a system of government which itself would surely be constitutionally im-

---

[7]We are not in any way suggesting that position of the executive has been consistent with Solicitor Margold's over the years. Indeed, to take just two examples, the United States sided with the Indians' position in *Oliphant* and *Montana*. Rather, the point is that Solicitor Margold's opinion shows the position of the executive shortly after the adoption of the Indian Reorganization Act and its understanding of the limited effect of that Act—an understanding reinforced by the legislative history discussed above.

permissible to the extent that non-members who are subject to it cannot possibly participate in it, through the voting franchise or otherwise?

Talton v. Mayes, supra, shields tribal governments from the Bill of Rights; but it does not shield the Congress.[8] Further, it is not just a question of Congress tolerating the continued existence of tribal governments through inaction. If tribal governments are to be true governments, recognizable as such by the federal courts, they must first be recognized as such by the Congress, in a treaty or statute, or by the Executive pursuant to congressional authority. Absent congressional action, the problem does not even arise. And that fact is itself a large part of the problem. In the final analysis, the Tribes have governmental powers only to the extent that Congress so wills. That, after all, is why the extent of these powers is always a federal question. *Cf. National Farmers Union Insurance Cos. v. Crow Tribe*, 471 U.S. 845 (1985).

This constitutional issue is really a form of the familiar "state action" issue. *Cf. Marsh v. Alabama*, 326 U.S. 501 (1946), *Shelley v. Kraemer*, 334 U.S. 1 (1948) and *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961). And Solicitor Margold's opinion points the way, we believe, to a

---

[8]The applicability of the Constitution to the congresional exercise of its treaty-making power with the Indians, and the constitutional difficulties in a broad grant of tribal jurisdiction over non-Indians, were recognized by the Attorney General of the United States 150 years ago. In 2 Op. Atty. Gen. 693 (1834), relied upon in *Oliphant*, 435 U.S. at 199, the Attorney General stated, with regard to the treaty of Dancing Rabbit (7 Stat. 33), entered into with the Choctaws in 1830:

> For the more effectual accomplishment of the same end [creation of a territory for the Choctaws west of the Mississippi], the government and people of the United States, by the 4th article of the treaty, engaged to "secure to the Choctaw nation of red people the jurisdiction and government of all the persons and property that may be within their limits west." If this provision had stopped here, it would have indicated an intention on the part of the framers of the treaty to give to the Choctaws a jurisdiction and government exclusive of all interference by the United States, or any other authority, and broad enough to authorize the particular proceedings now before me; *though it is by no means clear that such a treaty could have been made, or would be valid, under the constitution of the United States.*" 2 Op. Atty. Gen. at 694. (Emphasis supplied.)

solution. Tribal government can apply only to tribal members; but those members are perfectly free to avoid the jurisdiction of that government by becoming non-members. That solution, we suggest is consistent with the understanding of the framers of our Constitution as construed in *Talton v. Mayes*, *i.e.*, that tribal governments were to continue, if Congress so wished, just as they were before the adoption of that Constitution, exercising jurisdiction over members only, unfettered by the Constitution itself. At the same time, it assures that non-members will not be deprived of the benefit of the Bill of Rights.[9]

The approach in Solicitor Margold's opinion, we would agree, may not be entirely consistent with the *Montana* qualifications, depending, of course, on how broadly they are construed and applied.[10] But the inherent difficulties in applying them to concrete cases such as this one, as well as the constitutional considerations just discussed, may well warrant reexamination of those qualifications. *Cf. Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985)

---

[9]Enforcement of the Indian Civil Rights Act by tribal courts is simply no substitute for enforcement of the Bill of Rights by federal and state courts. *See* letter dated January 26, 1988, from John R. Bolton, Assistant Attorney General, U.S. Department of Justice, to Senator Daniel K. Inouye, attached as Appendix B to this brief, for a discussion of the type of treatment litigants are likely to face in tribal courts.

[10]In an opinion issued on October 25, 1934, shortly before his December 13, 1934, opinion discussed above, Solicitor Margold did recognize a type of civil jurisdiction even over non-members. In "Powers of Indian Tribes", he stated that the tribal taxing power" * * * may be exercised over members of the tribe and over non-members, so far as non-members may accept privileges of trade, residence, etc., to which taxes may be attached as conditions." 55 ID 14, at 46 (1934). So long as the tribal sanctions are confined to withdrawal of the privileges which the Tribe is empowered to confer in the first place, we see no constitutional problems in this position, or any inconsistency with Solicitor Margold's subsequent opinon of December 13, 1934, discussed at pp. 15-17, *supra*.

CONCLUSION

For the reasons given above, the petitions for a writ of certiorari, should be granted.

Respectfully submitted,

KENNETH O. EIKENBERRY
Attorney General of Washington

TIMOTHY R. MALONE
Assistant Attorney General
(Counsel of Record)

Attorneys for Amici States

APPENDIX A

Note: The use of this list should not be construed as an admission by any of the amici States as to the legal status or boundaries of any particular reservation.

Note: A reservation located in more than one State is listed under each State in which it is located.

RESERVATIONS

Annette Island Reserve

Camp Verde Reservation
Cocopah Reservation
Colorado River Reservation
Fort Apache Reservation
Fort McDowell Reservation
Fort Mojave Reservation
Fort Yuma Reservation
Gila Bend Reservation
Gila River Reservation
Havasupai Reservation
Hopi Reservation
Hualapai Reservation
Kaibab Reservation
Maricopa Reservation
Navajo Reservation
Papago Reservation
Pascua Yaqui Reservation
Payson Community of Yavapai-Apache
Salt River Reservation
San Carlos Reservation
San Xavier Reservation
Yavapai Reservation

Agua Caliente Reservation
Alturas Rancheria
Augustine Reservation
Barona Rancheria
Benton Paiute Reservation
Berry Creek Rancheria
Big Bend Rancheria
Big Lagoon Rancheria
Big Pine Rancheria

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIANS
AK	1,195	958	237
AZ	200	173	27
AZ	355	349	6
AZ	7,873	1,965	5,908
AZ	7,774	6,880	894
AZ	349	345	4
AZ	219	127	92
AZ	4,581	1,096	3,485
AZ	-	-	-
AZ	7,380	7,067	313
AZ	282	267	15
AZ	6,906	6,601	305
AZ	849	809	40
AZ	173	93	80
AZ	397	375	22
AZ	110,433	104,968	5,465
AZ	7,203	6,959	244
AZ	562	551	11
AZ	-	-	-
AZ	4,089	2,624	1,465
AZ	6,104	5,872	232
AZ	875	851	24
AZ	76	66	10
CA	13,743	65	13,678
CA	7	7	0
CA	-	-	-
CA	300	222	78
CA	12	12	0
CA	-	-	-
CA	11	8	3
CA	11	8	3
CA	396	269	127

RESERVATIONS

Bishop Rancheria
Bridgeport Colony
Cabazon Reservation
Cachil Dehe Rancheria
Cahuilla Reservation
Campo Reservation
Capitan Grande Reservation
Cedarville Rancheria
Chamehuevi Reservation
Cold Springs Rancheria
Colorado River Reservation
Cortina Rancheria
Coyote Valley Rancheria
Cuyapaipe Reservation
Dry Creek Rancheria
Enterprise Rancheria
Fort Bidwell Reservation
Fort Independence Reservation
Fort Mojave Reservation
Fort Yuma Reservation
Grindstone Creek Rancheria
Hoopa Valley Extension Reservation
Hoopa Valley Reservation
Hopland Rancheria
Inaja-Cosmit Reservation
Jackson Rancheria
La Jolla Reservation
La Posta Reservation
Laytonville Rancheria
Likely Rancheria
Lone Pine Rancheria
Lookout Rancheria
Los Coyotes Reservation
Manchester Rancheria
Manzanita Reservation
Mesa Grande Reservation
Middletown Rancheria
Montgomery Creek Rancheria
Morango Reservation

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIAN
CA	1,125	784	341
CA	55	47	8
CA	815	8	807
CA	17	17	0
CA	56	29	27
CA	100	86	14
CA	-	-	-
CA	6	6	0
CA	265	23	242
CA	65	63	2
CA	7,873	1,965	5,908
CA	6	2	4
CA	9	-	9
CA	2	2	0
CA	46	41	5
CA	16	16	0
CA	98	93	5
CA	61	31	30
CA	219	127	92
CA	4,581	1,096	3,485
CA	73	72	1
CA	1,082	411	671
CA	2,041	1,502	539
CA	13	10	3
CA	-	-	-
CA	15	15	0
CA	151	141	10
CA	1	1	0
CA	111	105	6
CA	-	-	-
CA	248	172	76
CA	13	12	1
CA	51	45	6
CA	81	77	4
CA	14	13	1
CA	-	-	-
CA	40	39	1
CA	1	1	0
CA	414	313	101

RESERVATIONS

Pala Reservation
Pauma Reservation
Pechanga Reservation
Ramona Reservation
Resighini Rancheria
Rincon Reservation
Roaring Creek Rancheria
Round Valley Reservation
Rumsey Rancheria
San Manuel Reservation
San Pasqual Reservation
Santa Rosa Rancheria
Santa Rosa Reservation
Santa Ynez Reservation
Santa Ysabel Reservation
Sheep Ranch Rancheria
Sherwood Valley Rancheria
Shingle Springs Rancheria
Soboba Reservation
Stewart's Point Rancheria
Sulphur Bank Rancheria
Susanville Reservation
Sycuan Reservation
Torres-Martinez Reservation
Trinidad Rancheria
Tule River Reservation
Tuolumne Rancheria
Twenty-Nine Palms Reservation
Viejas Rancheria
Woodfords Community
XL Ranch Reservation

Southern Ute Reservation
Ute Mountain Reservation

Eastern Pequot Reservation
Golden Hill Reservation
Schaghticoke Reservation

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIAN
CA	648	519	129
CA	-	-	-
CA	141	117	24
CA	-	-	-
CA	21	18	3
CA	490	297	193
CA	25	24	1
CA	1,268	528	740
CA	13	11	2
CA	31	24	7
CA	209	133	76
CA	169	117	52
CA	12	12	0
CA	133	-	133
CA	196	181	15
CA	2	2	0
CA	19	17	2
CA	-	-	-
CA	258	230	28
CA	75	72	3
CA	115	115	0
CA	90	82	8
CA	61	48	13
CA	278	11	267
CA	63	47	16
CA	453	424	29
CA	93	73	20
CA	-	-	-
CA	209	142	67
CA	308	126	182
CA	24	24	0
CO	5,739	855	4,884
CO	1,138	1,111	27
CT	29	16	13
CT	3	3	0
CT	6	2	4

RESERVATIONS

Western Pequot Reservation

Big Cypress Reservation
Brighton Reservation
Hollywood Reservation
Miccosukee Reservation

Tama Reservation

Omaha Reservation
Sac and Fox Reservation

Coeur d'Alene Reservation
Duck Valley Reservation
Fort Hall Reservation
Kootenai Reservation
Nez Perce Reservation

Iowa Reservation
Kickapoo Reservation
Pottawatomi Reservation
Sac and Fox Reservation

Chitimacha Reservation
Coushatta Reservation
Tunica-Biloxi Reservation

Hassanamisco Reservation
Wampanoog Reservation

Indian Township Reservation
Penobscot Reservation
Pleasant Point Reservation

Bay Mills Reservation
Hannahville Community
Isabella Reservation
L'Anse Reservation

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIAN
CT	24	6	18
FL	387	351	36
FL	338	323	15
FL	2,592	416	2,176
FL	276	1	275
GA	33	30	3
IA	5,459	1,275	4,184
IA	509	492	17
ID	4,911	538	4,373
ID	1,041	932	109
ID	4,783	2,542	2,241
ID	-	-	-
ID	17,806	1,463	16,343
KS	112	26	86
KS	461	356	105
KS	985	331	654
KS	114	3	111
LA	1,300	185	1,115
LA	-	-	-
LA	63	7	56
MA	1	1	0
MA	-	-	-
ME	423	333	90
ME	458	398	60
ME	549	504	45
MI	322	283	39
MI	211	206	5
MI	23,020	517	22,503
MI	3,289	581	2,708

RESERVATIONS

Ontonagon Reservation
Pine Creek Reservation
Sault Ste. Marie Reservation

Bois Forte Reservation (Nett Lake)
Deer Creek Reservation
Fond du Lac Reservation
Grand Portage Reservation
Leech Lake Reservation
Lower Sioux Community
Mille Locs Reservation
Prairie Island Community
Red Lake Reservation
Sandy Lake Reservation
Shakopee Community
Upper Sioux Community
Vermillion Lake Reservation
White Earth Reservation

Mississippi Choctaw Reservation

Blackfeet Reservation
Crow Reservation
Flathead Reservation
Fort Belknap Reservation
Fort Peck Reservation
Northern Cheyenne Reservation
Other reservation lands in Montana
Rocky Boy's Reservation

Eastern Cherokee Reservation

Fort Berthold Reservation
Fort Totten Reservation
Sisseton Reservation
Standing Rock Reservation
Turtle Mountain Reservation

Iowa Reservation

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIAN
MI	-	-	-
MI	-	-	-
MI	-	-	-
MN	416	392	24
MN	219	7	212
MN	2,853	514	2,339
MN	281	187	94
MN	8,411	2,759	5,652
MN	79	65	14
MN	37	36	1
MN	111	80	31
MN	2,979	2,823	156
MN	-	-	-
MN	105	77	28
MN	54	51	3
MN	116	103	13
MN	9,505	2,554	6,951
MS	2,866	2,756	110
MT	6,660	5,080	1,580
MT	5,973	3,953	2,020
MT	19,628	3,771	15,857
MT	2,060	1,870	190
MT	9,921	4,273	5,648
MT	3,664	3,101	563
MT	8	1	7
MT	1,650	1,549	101
NC	5,717	4,844	873
ND	5,577	2,640	2,937
ND	3,313	2,261	1,052
ND	13,586	2,700	10,886
ND	8,816	4,800	4,016
ND	4,311	4,021	290
NE	112	26	86

RESERVATIONS

Omaha Reservation
Sac and Fox Reservation
Santee Reservation
Winnebago Reservation

Acoma Pueblo
Alamo Reservation
Canoncito Reservation
Cochiti Pueblo
Isleta Pueblo
Jemez Pueblo
Jicarilla Apache Reservation
Laguna Pueblo
Mescalero Apache Reservation
Nambe Pueblo
Navajo Reservation
Picuris Pueblo
Pojoaque Pueblo
Ramah Community
San Felipe Pueblo
San Felipe/Santa Ana Joint Area
San Felipe/Santo Domingo Joint Area
San Ildefonso Pueblo
San Juan Pueblo
Sandia Pueblo
Santa Ana Pueblo
Santa Clara Pueblo
Santo Domingo Pueblo
Taos Pueblo
Tesuque Pueblo
Ute Mountain Reservation
Zia Pueblo
Zuni Pueblo

Carson Colony
Dresslerville Colony
Duck Valley Reservation
Duckwater Reservation

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIAN
NE	5,459	1,275	4,184
NE	114	3	111
NE	914	420	494
NE	2,554	1,140	1,414
NM	2,359	2,268	91
NM	1,072	1,062	10
NM	978	969	19
NM	839	613	226
NM	2,412	2,289	123
NM	1,515	1,504	11
NM	1,996	1,715	281
NM	3,791	3,564	227
NM	2,101	1,922	179
NM	386	175	211
NM	110,433	104,968	5,465
NM	337	116	221
NM	1,191	94	1,097
NM	1,237	1,163	74
NM	2,266	1,789	477
NM	-	-	-
NM	122	116	6
NM	1,491	488	1,003
NM	4,365	852	3,513
NM	683	217	466
NM	409	407	2
NM	6,740	459	6,281
NM	2,162	2,139	23
NM	1,421	716	705
NM	252	235	17
NM	1,138	1,111	27
NM	524	524	0
NM	6,291	5,988	303
NV	227	213	14
NV	129	127	2
NV	1,041	932	109
NV	106	103	3

RESERVATIONS

Ely Colony
Fallon Colony
Fallon Reservation
Fort McDermitt Reservation
Fort Mojave Reservation
Goshute Reservation
Las Vegas Colony
Lovelock Colony
Moapa River Reservation
Pyramid Lake Reservation
Reno-Sparks Colony
Summit Lake Reservation
Te-Moak Reservation
Walker River Reservation
Washoe Reservation
Winnemucca Colony
Yerington Reservation
Yomba Reservation

Allegany Reservation
Cattaraugus Reservation
Oil Springs Reservation
Onondaga Reservation
Poospatuck Reservation
Shinnecock Reservation
St. Regis Mohawk Reservation
Tonawanda Reservation
Tuscarora Reservation

Osage Reservation

Burns Reservation
Fort McDermitt Reservation
Umatilla Reservation
Warm Springs Reservation

Catawba Reservation

Cheyenne River Reservation

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIAN
NV	78	67	11
NV	64	46	18
NV	279	258	21
NV	472	463	9
NV	219	127	92
NV	105	105	0
NV	113	106	7
NV	126	117	9
NV	185	182	3
NV	853	720	133
NV	463	451	12
NV	-	-	-
NV	91	91	0
NV	571	471	100
NV	87	4	83
NV	37	35	2
NV	421	105	316
NV	60	57	3
NY	7,681	925	6,756
NY	1,994	1,855	139
NY	6	-	6
NY	596	592	4
NY	203	94	119
NY	297	194	103
NY	1,802	1,763	39
NY	467	438	29
NY	921	873	48
OK	39,327	4,749	34,578
OR	167	160	7
OR	472	463	9
OR	2,619	908	1,711
OR	2,244	2,004	240
SC	998	728	270
SD	1,826	1,529	297

RESERVATIONS

Crow Creek Reservation
Flandreau Reservation
Lower Brule Reservation
Pine Ridge Reservation
Rosebud Reservation
Sisseton Reservation
Standing Rock Reservation
Yankton Reservation

Alabama-Coushatta Reservation
Tigua Reservation

Goshute Reservation
Navajo Reservation
Skull Valley Reservation
Southern Paiute Reservation
Uintah and Ouray Reservation

Pamunkey Reservation

Chehalis Reservation
Colville Reservation
Hoh Reservation
Kalispel Reservation
Lower Elwah Reservation
Lummi Reservation
Makah Reservation
Muckleshoot Reservation
Nisqually Reservation
Nooksack Reservation
Ozette Reservation
Port Gamble Reservation
Port Madison Reservation
Puyallup Reservation
Quileute Reservation
Quinault Reservation
Sauk-Suiattle Reservation
Shoalwater Reservation
Skokomish Reservation

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIAN
SD	1,787	1,474	313
SD	169	158	11
SD	1,023	850	173
SD	13,143	11,882	1,261
SD	7,328	5,688	1,640
SD	13,586	2,700	10,886
SD	8,816	4,800	4,016
SD	6,541	1,688	4,853
TX	504	494	10
TX	503	-	503
UT	105	105	0
UT	110,433	104,968	5,465
UT	13	13	0
UT	1,217	196	1,021
UT	16,909	2,050	14,859
VA	59	50	9
WA	405	200	205
WA	7,047	3,500	3,547
WA	67	46	21
WA	106	98	8
WA	67	47	20
WA	2,274	1,259	1,015
WA	1,245	803	442
WA	2,991	375	2,616
WA	254	42	212
WA	-	-	-
WA	6	1	5
WA	302	266	36
WA	3,415	148	3,267
WA	25,188	856	24,332
WA	327	273	54
WA	1,501	943	558
WA	-	-	-
WA	33	28	5
WA	483	305	78

RESERVATIONS

Spokane Reservation
Squaxin Island Reservation
Swinomish Reservation
Tulalip Reservation
Upper Skagit Reservation
Yakima Reservation

Bad River Reservation
Lac Courte Oreilles Reservation
Lac du Flambeau Reservation
Menominee Reservation
Oneida Reservation
Patawatomi Reservation
Red Cliff Reservation
Sokaogon Chippewa Community
St. Croix Reservation
Stockbridge Reservation
Wisconsin Winnebago Reservation

Wind River Reservation

STATE	TOTAL PERSONS	TOTAL INDIANS	TOTAL NON-INDIAN
WA	1,475	1,050	425
WA	56	35	21
WA	1,390	414	976
WA	5,046	768	4,278
WA	5	-	5
WA	25,363	4,983	20,380
WI	916	699	217
WI	1,699	1,145	554
WI	2,211	1,092	1,119
WI	2,672	2,377	295
WI	13,389	1,821	11,568
WI	224	220	4
WI	686	589	97
WI	105	95	10
WI	427	392	35
WI	1,272	582	690
WI	658	579	79
WY	23,157	4,150	19,007

APPENDIX B

U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General — *Washington, D.C. 20530*

26 Jan. 1988

Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
United State Senate
Washington, D.C. 20510

Re: *S. 1703 and the Indian Civil Rights Act*

Dear Mr. Chairman:

This supplements our letter of October 27, 1987 concerning S. 1703, a bill to amend the Indian Self-Determination and Education Assistance Act. We said then, and remained convinced now, that tribal programs funded by this Act may fail to comply fully with the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1301 *et seq.* (P.L. 90-284, Title II of the Act of April 11, 1968, 88 Stat. 77). We propose to grant federal courts, following the exhaustion of tribal remedies, limited authority to enforce the ICRA. Specifically, we suggest adding the following new section to S. 1703:

"Sec. ___. Compliance with the Indian Civil Rights Act.

"Title I of the Indian Self-Determination and Education Assistant Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended by adding the following new section 112:

"Sec. 112. (a) Any program or activity receiving federal financial assistance from the Secretary of the Interior or from the Secretary of Health and Human Services pursuant to this Title shall be administered in compliance with the Indian Civil Rights Act of 1968 (Public Law 90-284, Act of April 11, 1968, 82 Stat. 77).

"(b) Federal district courts shall have jurisdiction of civil actions alleging the failure of programs or activities funded by this Act to comply with § 202 of Title II

of the Civil Rights Act of 1968 (Public Law 90-284, Act of April 11, 1968, 82 Stat. 77).

"(c) Any aggrieved person, following the exhaustion of such tribal remedies as may be both timely and reasonable under the circumstances, or the Attorney General on behalf of the United States, may initiate an action in the appropriate federal district court for equitable relief against an Indian tribe, tribal organization, or official thereof, alleging a failure to comply with subparagraphs (a) and (b) above. Tribal sovereign immunity shall not constitute a defense to such an action."

The language we suggest grants federal district courts jurisdiction, following the exhaustion of tribal remedies, of complaints that federally funded tribal programs violate the ICRA. The proposed amendment is limited to federally funded tribal programs; tribal activities which do not receive federal dollars remain unaffected. For the reasons spelled out below, we urge the Select Committee to adopt the proposed amendment to S. 1703.

1. The Need To Condition S. 1703 On Compliance With The ICRA

S. 1703 amends the current law to aid Indian tribes in providing important government services to their members. Under the Act, Indian tribes may choose to provide services such as health care, education, social welfare benefits, law enforcement, judicial services, employment assistance and other government services to many of the nation's nearly one million eligible Indians. Funding is provided by the United States pursuant to contracts between tribes and various federal agencies. The program is substantial; the Bureau of Indian Affairs alone estimates that in fiscal 1988 its self-determination contracts with Indian tribes will total 308 million dollars. Absent the language we propose, or an equally effective remedy, we believe the beneficiaries of programs funded by this Act may be denied the protection of federal law.

Beneficiaries of federal programs generally are pro-

tected by broad, well-defined constitutional rights and the full range of federal civil rights legislation. Furthermore, federal courts are routinely available to enforce rights secured by federal civil rights statutes or the Constitution. Beneficiaries of programs funded under this Act, however, are limited to the protections contained in the ICRA. Constitutional safeguards are largely unavailable. *Talton v. Mayes*, 163 U.S. 376 (1896). While the ICRA contains many of the protections found in the Constitution, except for habeas corpus it is unenforceable in federal courts. Tribal forums enjoy exclusive jurisdiction of civil actions brought to enforce the ICRA. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). Although some post *Santa Clara* litigants indirectly sought to redress tribal grievances by suing federal officials in district court, few such suits have achieved their objective in a timely manner. See, *e.g.*, *Runs After v. United States*, 766 F.2d 347 (8th Cir. 1985) and *Wheeler v. United States Department of Interior*, 811 F.2d 549 (10th Cir. 1987).

While tribal measures to enforce the ICRA may be available in theory, such remedies are often unavailable in practice. Since the Supreme Court's decision in *Santa Clara Pueblo*, several federal court opinions, two major news articles and the Report of the Presidential Commission on Indian Reservation Economies have all questioned the fairness or availability of ICRA enforcement in tribal court. In addition, serious allegations of ICRA violations surfaced recently in hearings held by the United States Commission on Civil Rights. In testimony taken in Washington, D.C., Rapid City, South Dakota, and Flagstaff, Arizona, a number of Indians shared important evidence of tribal non-compliance with the ICRA.

This Department's substantial interest in ICRA compliance, see, e.g., 28 CFR § 0.50(a)—indeed, our conviction that all federal civil rights statutes must be aggressively enforced—compels us to add our voice to those who find a failure to fully enforce the ICRA post *Santa Clara Pueblo*.

2. Tribal Failure to Enforce The ICRA Post *Santa Clara Pueblo*

For 10 years prior to *Santa Clara Pueblo*, the ICRA was routinely enforced in both tribal and federal courts, with little if any adverse effect on tribal government. Federal court review ended, however, with the Supreme Court's 1978 decision in *Santa Clara Pueblo* that federal courts lack non-habeas corpus jurisdiction over ICRA cases. Although the Court found that the ICRA "has the substantial and intended effect of changing the law which [tribal] forums are obliged to apply", *Id.* at 65, enforcement was limited to tribal forums and remedies.

Substantial evidence now exists that tribal forums may not, as the Supreme Court assumed in *Santa Clara Pueblo*, "vindicate rights created by the ICRA". *Id.* Tribal remedies under the ICRA are often inadequate; they fail to fully protect individuals from the arbitrary and unfair action of tribal government, including tribal programs and activities funded by the Self-Determination and Education Assistance Act. According to the Presidential Commission On Reservations Economies, "the politicization of tribal courts [by tribal governments] * * * discriminate[s] unfairly against individuals and businesses." *Report and Recommendation To The President Of The United States*, Presidential Commission On Indian Reservation Economies, November 1984, Part Two at 36. Three factors contribute to this result: first, judicial review may be unavailable; second, tribal sovereign immunity and other jurisdictional impediments may bar or limit ICRA relief; and, third, tribal governing bodies interfere with tribal courts.

A. The Lack Of Judicial Review

Tribal courts lack clear authority to review tribal government action. In some tribes, judicial review may be unavailable. See *e.g.*, *Santa Clara Pueblo, supra.* In other tribes judicial review may be limited. The Cheyenne River Sioux

Tribe, for example, is one of several tribes which explicitly reserve final authority over tribal action to tribal councils and not tribal courts. A recent Cheyenne River resolution states in part:

> BE IT FINALLY RESOLVED, that the Council shall retain the power to review the decision of the Tribal Court of Appeals on issues of law under such conditions and procedures as are found by the Council to be appropriate.

Cheyenne River Sioux Tribal Resolution No. 213-85-CR. Similarly, Oglala Sioux Tribal Resolution No. 87-76 provides in part:

> WHEREAS, the Oglala Siox Tribe has reviewed the actions of the Tribal Court and Tribal Court of Appeals in the *Moore* case and find that the said courts have exceeded their authority under Ordinance No. 86-09, now
>
> THEREFORE BE IT RESOLVED, that the Oglala Sioux Tribal Council hereby declares that all court orders in the case of *Margaret Moore v. Oglala Sioux Tribal Personnel Board, et al.* are hereby declared null and void * * * .

Although the rule may not be as clear elsewhere, "[i]n at least 27 tribes the council hears appeals from tribal court judgment * * * ." American Indian Lawyer Training Program, *Indian Self-Determination And The Role Of Tribal Courts*, 1977, at 59. In fact, tribal courts are available in only about one half of the nation's nearly 300 federally recognized Indian tribes.

As a result, the same tribal body which takes action is often called upon to determine its propriety. The Eighth Circuit in *Runs After v. United States*, *supra*, citing Justice White's dissent in *Santa Clara Pueblo*, notes parenthetically that "* * * given congressional concern about deprivations of individual Indians' rights by tribal authorities, [it is] improbable that Congress desired enforcement of rights to be left to the very tribal authorities alleged to have violated them." *Id.* at 353.

B. Sovereign Immunity And Other Jurisdictional Impediments To ICRA Enforcement In Tribal Court

In *Santa Clara Pueblo*, the Court found that "[t]ribal forums are available to vindicate rights created by the ICRA, and [the Act] has the substantial and intended effect of changing the law these forums are obliged to apply". *Santa Clara Pueblo*, *supra*, at 65. The clear implication is that tribal courts, where they exist, are available to enforce the ICRA. However, in addition to those tribes which have no court or refuse to permit full judicial review, other tribes rely on the doctrine of sovereign immunity or jurisdictional limitations to bar judicial enforcement of rights secured by the ICRA. For example, Cheyenne River Chairman Morgan Garreau provided the following testimony to the Civil Rights Commission:

> MS. MILLER: Do you believe that sovereign immunity is a bar to Indian Civil Rights Act claims against the tribe [in tribal court]?
>
> MR. GARREAU: Yes, I do. [The question] has come to the tribal council with regard to [a] waiver of sovereign immunity. As I stated, I sat on the tribal council. I served as administrative officer. At no time during those years, I believe from 1979 to the present [i.e., 1986], has the tribal council ever waived sovereign immunity for anyone, for any case or cause at all.
>
> MS. MILLER: So what that means is you are saying that the Indian Civil Rights Act really is unenforceable as against the tribe?
>
> MR. GARREAU: Unless the council waives sovereign immunity.
>
> MS. MILLER: Which it hasn't done.
>
> MR. GARREAU: No, they have not, for anyone.

Hearings, *supra*, at p. 377.

Cheyenne River is not an isolated case. Tribal court decisions which dismiss ICRA cases by invoking sovereign immunity have occurred in a number of jurisdictions. For example, in *Satiacum v. Sterud et al.*, No. 82-1157 (Puy. Tr.

Ct., April 23, 1983), 10 Indian L. Rep. 6013, the Puyallup Tribal Court rejects the argument that *Santa Clara Pueblo* "represents an explicit waiver of the tribe's immunity" in an ICRA action in tribal court. *Id* at 6015. In *Dubray v. Rosebud Housing Authority*, No. CIV83-01 (Rosebud Sioux Tr. Ct., Feb 1, 1985), 12 Indian L. Rep. 6015 (app. pndg., Intertribal Ct. of App.), the tribal court found "no provision in the tribal code which would waive the tribe's immunity to suits based on claims under the [ICRA]". *Id.* Therefore, the tribal court continued, "because the tribe's immunity has not been waived, the plaintiff's [ICRA] complaint * * * must be dismissed." *Id.* See also, *Whatoname v. Hualapai Tribe et al.*, Civil No. 003-80 (Hualapai Ct. of App., May 11, 1981) (The tribal court dismissed an ICRA case commenting that "[i]t is difficult for this Court to fathom how the Indian Civil Rights Act can be said to waive the immunity of the Tribe in its own Courts by implication while such waiver by implication was expressly rejected by the federal courts * * *". Slip o. at 8.); *Garman v. Fort Belknap Community Council, et. al.*, No. CV83-238, (Ft. Blkp Tr. Ct., Jan. 20, 1984), 11 Indian L. Rep. 6017 (ICRA case dismissed against tribal defendants with the observation that the tribe has "not chosen to expressly waive tribal sovereign immunity to allow enforcement of the Indian Civil Rights Act in tribal courts * * *"); and the cases cited by Johnson and Madden, *Sovereign Immunity In Indian Tribal Law*, 12 Am. Indian L. Rev. at 167, n. 59 (1984).

In those cases where sovereign immunity presents no bar to ICRA enforcement, other jurisdictional considerations may intervene. For example, tribal court civil jurisdiction may be limited to cases in which both parties are members of the tribe or each consent to tribal court jurisdiction. See, *e.g.*, 25 CFR §11.22C (The Interior Department's Court of Indian Offenses, which is similar to tribal courts, has "jurisdiction of all suits wherein the parties to the action are members of the tribe * * * and of all other suits between members and non-members which are brought before the court by stipulation of both parties.").

C. Separation Of Powers—The Lack Of Tribal Court Independence

Tribal governing bodies may interfere with the process of tribal courts. The 1984 Report of the Presidential Commission on Indian Reservation Economies found that

> failure [of tribal governments] to adhere to a constitutional principle separating executive, legislative and judicial powers has had a detrimental effect on [tribal] governmental functioning. For example, the failure to establish a clear separation of powers between the tribal council and the tribal judiciary has resulted in political interference with tribal courts, weakening their independence, and raising doubts about fairness and the rule of law.

Report And Recommendations To The President Of The United States, supra, Part One, at 29. The Presidential Commission, co-chaired by Ross O. Swimmer, further finds that

> [b]oth Indians and non-Indians complain of political discrimination against them by tribal governments and by tribal courts which are arms of tribal governments. Access to tribal physical resources, to the benefits of tribally managed programs, and to tribal employment is considered to be unfair by many Indians. Decisions rendered by tribal courts, which are controlled by tribal councils, are also perceived to be unfair by Indians and non-Indians.

Id., Part Two at 36.

Recent hearings before the United States Commission on Civil Rights provide further evidence that tribal courts may be incapable of enforcing rights secured by the ICRA. Former Chief Judge Trudell Guerue of the Rosebud Sioux Tribal Court wrote that there is an "absence of any forum in which the Indian Civil Rights Act is enforceable." Guerue, *The Indian Civil Rights Act — How it is Used As License And Not As Protection*, 1986, at 3 (unpublished paper in the files of the United States Commission On Civil Rights). This is true, according to Guerue, because tribal councils control

tribal courts; "removal from office or the bench is not an uncommon tribal council tool." *Id.*, at 4. This lack of judicial independence or separation of tribal powers was echoes by a number of other Indian judges. For example, former Tribal Judge Walter Woods of the Cheyenne River Sioux Tribe testified before the Civil Rights Commission that tribal

> judges are politically appointed so they can be controlled by the council. If they make decisions that are not favorable with the council, then they will be removed without a hearing—because I know; I was one of the individuals that was removed.

Hearings before the United States Commission on Civil Rights, Rapid City, S.D., 1986, at 392. Former Cheyenne River Sioux Tribal Chairman Garreau confirmed that "[a]ll it takes is just an action of the tribal council to remove a judge." *Id.* at 383.

A number of federal court decisions further underscore the lack of an independent tribal judiciary. In *Shortbull v. Looking Elk*, 677 F.2d 645 (8th Cir. 1982), a panel of the Eight Circuit noted that "because of [a tribal court] ruling, Judge Red Shirt was removed from office and was replaced by a judge more sympathetic to the tribal Executive Committee, who quashed Judge Red Shirt's orders." *Id.* at 650. As a result, "[w]e are thus presented with a situation in which [the plaintiff] has no remedy within the tribal machinery * * *" *Id.* Similarly, in *Runs After v. United States*, *supra*, the Eighth Circuit found that after the tribal court upheld a contested voting redistricting plan

> the Tribal Council terminated the tribal court judge, allegedly because of the decision enforcing the reapportionment, rescinded the tribal court order directing elections to be held in thirteen election districts, and appointed a new tribal court judge.

Id. at 348. In addition, the tribe "forever barred" the judge who was removed in *Runs After* from tribal political office. Resolution No. 190-84-CR, Cheyenne River Sioux Tribe, July 12, 1984. "Abuse of power by tribal governments is wide-

spread", according to former Tribal Judge Guerue. Guerue, *supra*, at 3.

3. The Need To Expand The Federal Court's ICRA Jurisdiction

With the exception of habeas corpus authority found in §1303 of the ICRA, 25 U.S.C. §1303, federal courts lack jurisdiction of ICRA complaints. Enforcement is left exclusively to tribal forums. However, the Supreme Court's finding that these tribal forums are "available to vindicate rights created by the ICRA" has not proved accurate. *Santa Clara Pueblo*, *supra*, at 65. The lack of judicial review, sovereign immunity, jurisdictional barriers and tribal council interference with tribal courts are some of the factors which impede full tribal enforcement of rights secured by the ICRA.

Several federal court decisions recognize the anomaly of creating statutory rights without an adequate enforcement mechanism or remedy. In *Garreaux v. Andrus*, 676 F.2d 1206 (8th Cir. 1982), for example, the Eight Circuit acknowledged "that the plaintiffs are being treated unfairly by the tribal council" but, citing *Santa Clara Pueblo*, went on to hold that federal courts lack statutory authority to consider ICRA claims. *ID.* at 1210, n. 2. See also, *Shortbull v. Looking Elk*, *supra*; and *R.J. Williams Co. v. Fort Belknap Housing Authority*, 509 F. Supp. 933 (D.C. Mont. 1981), Rev'd and remanded on other grounds, 719 F.2d 979 (9th Cir. 1983) ("This case illustrates the absurd results that the broad rule of [*Santa Clara Pueblo*] can cause." 509 F. Supp. at 939).

Courts, however, properly defer to congressional action. In *Kickapoo Tribe v. Thomas*, No. 83-4177 (D. Kan., June 24, 1983), 10 Indian L. Rep. 3093, the court found that it is beyond the power of the judiciary "to determine whether [ ] congressional Indian policy fosters self-government or a vacuum with the potential for chaos." *Id.* at 3096. In *Wells v. Philbrick*, 486 F. Supp. 807 (1980), the court went one step further adding

> [i]t certainly may be argued that the effect, after *Santa Clara Pueblo*, of the ICRA is to create rights while withholding any meaningful remedies to enforce them. [citation omitted], but it is for Congress, not the Courts, to resolve this state of affairs [citing *Santa Clara Pueblo, supra*, at 72].

Id. at 809.

Evidence of the tribal failure to fully enforce the ICRA is important because, as the Court noted in *Santa Clara Pueblo*,

> Congress' authority over Indian matters is extraordinarily broad * * * Congress retains authority expressly to authorize civil actions for injunctive or other relief to redress violations of [the ICRA], in the event that the tribes themselves prove deficient in applying and enforcing its substantive provisions.

Santa Clara Pueblo, supra, at 72. In fact, the Presidential Commission on Indian Reservation Economies has made such a recommendation. The Commission, in its November 1984 report, recommends

> that legislation be provided for appellate review of tribal court decisions to the federal court system where constitutional or statutory rights are involved.

Report And Recommendations To The President, supra, Part One at 30. Profession Wilkinson adds support for such a view when he argues "that federal judicial review of tribal action is often appropriate and perhaps should be expanded". Wilkinson, *American Indians, Time, and the Law*, Yale Univ. Press, 1987, at p. 113 (1987). A similar view was voiced by Gover and Laurence. In discussing the need to modify both *Santa Clara Pueblo* and *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), they suggest that:

> [t]he legislative branch seems well-suited to judge the sophistication of Indian judicial systems * * *. [A legislative] modification of [*Santa Clara*] to grant a careful and not overly disruptive federal oversight of [tribal] jurisdiction might be acceptable. We leave the details of such legislation in the capable hands of Congress * * *.

> It would place a scalpel back in the federal judge's hand
> * * *

Avoiding Santa Clara Pueblo v. Martinez: The Litigation In Federal Court Of Civil Actions Under The Indian Civil Rights Act, 8 Hamlin L. Rev. 497, 523 (1985). See also, *Final Report Of Task Force Number 9*, American Indian Policy Review Commission, September, 1976, at p. 35 (The standards set by Congress in the ICRA permit federal courts to be "sensitive" to tribal concerns and such a process has a "salutary" effect on federal court construction of the Act).

A number of tribal judges also recognize the need for federal court ICRA jurisdiction. Judge Sambroak of the Rosebud Sioux Tribal Court provided the following testimony to the Civil Rights Commission:

> MR. MCDONALD: Do you believe the ICRA should be amended to allow [a] private right of action in federal court?
> JUDGE SAMBROAK: Yes.

Hearings, *Supra*, at 250. Chief Judge Lorraine Rousseau of the Sisseton Wahpeton Sioux Tribal Court echoed the same theme when she told the Civil Rights Commission:

> I guess what I'm saying is there may be a need for limited jurisdiction by the federal courts in certain cases.

Testimony Before the United States Commission on Civil Rights, Washington, D.C., February, 1986 at 196.

4. Conclusion

Santa Clara Pueblo, which held that federal courts lack jurisdiction after 10 years of effective ICRA enforcement, was premised on the assumption that "[t]ribal forums are available to vindicate rights created by the ICRA." *Santa Clara Pueblo, supra*, at 65. Since the record now shows serious tribal "deficien[cies] in applying and enforcing" the ICRA, we look to Congress, as did the Court in *Santa Clara Pueblo*, to permit "civil actions for injunctive or other relief to redress violations of [the ICRA]." *Id.* at 72. Systemic, institu-

tional factors, including sovereign immunity and the lack of judicial independence, often limit the ability of tribal forums, as a practical matter, to remedy violations of the ICRA. Further, many tribes, not just a few suffer from these systemic impediments to effective tribal enforcement of the ICRA. Accordingly, we urge the Select Committee to include language in S. 1703, along the lines set out above, which grants federal courts limited jurisdiction of complaints that federally funded tribal programs violate the ICRA.

The Office of Management and Budge had advised this Department that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

JOHN R. BOLTON
Assistant Attorney General
Office of Legislative Affairs